IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No.510 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

B J MAKWANA

Versus

KIRITKUMAR LAXMANDAS

Appearance:

1. Criminal Appeal No. 510 of 1989

MR SK BRHAMBHATT for MR BP TANNA for Appellant No. 1

MR KV SHELAT for Respondent No. 1

MR BD DESAI, APP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 16/09/2003

ORAL JUDGEMENT

1. This appeal has been preferred by the original complainant against the judgement and order dated 29-10-1988 passed by the Metropolitan Magistrate, Court No.8, Ahmedabad in Summary Case No.488 of 1987 acquitting the original accused, i.e. respondent No.1 herein, for

the offence under Section 7 read with Section 16(1)(a)(i) of The Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act').

2. Mr.S.K.Brhambhatt for Mr.B.P.Tanna, learned advocate appears for the appellant, Mr.K.V.Shelat appears for respondent No.1 and Mr.B.D.Desai, learned Addl. Public Prosecutor, for respondent No.2.

3. The case of the prosecution, in brief, is that the complainant is the designated Food Inspector for the Ahmedabad Municipal Corporation, Ahmedabad. Respondent No.1 is carrying on business of selling milk at his shop situated at Lamba Pada Ni Pole, Raipur, Ahmedabad. On 03-03-1987, at around 9:00 a.m., the complainant alongwith one Shri A.S.Talat, Peon, visited the milk shop of respondent No.1 and purchased 750 M.L. of cow milk after making the necessary payment of Rs.3/= in presence of a pancha - Vishnukumar Prahaladji and informed accused No.1 that the said purchase was made for the purpose of analysis. That the necessary formalities were observed like dividing the purchased milk into three equal samples and kept in three clean empty dry bottles and after adding 20 drops of Formalin in each of the three bottles, the bottles were sealed, packed, wrapped and labelled in presence of the pancha. In short, the necessary formalities prescribed under the Act and Rules were duly observed. Thereafter one sample was forwarded to the Public Analyst, Vadodara for analysis. Upon receipt of the report of the Public Analyst it was found that there is 1 per cent less solids-no-fat in the milk i.e. the milk contained 7.5 per cent solids-no-fat instead of 8.5 per cent solids-no-fat. Thus, the sample of cow milk was found to be adulterated. Therefore, complaint was filed against the present respondent No.1 after obtaining necessary permission of the Deputy Municipal Commissioner.

4. Plea of the original accused (respondent No.1) was recorded on 12-10-1987. He denied the charge framed against him and claimed to be tried. The prosecution examined complainant - Bhogilal Jethalal Makwana, Food Inspector, as P.W. 1 at Exh.6, pancha Vishnuprasad Prahaladji Kinnariwala as P.W. 2 on 17-12-1987 and peon Shri Abdulkarim S. Talat as P.W. 3 on 19-01-1988. The prosecution also produced documentary evidence at Exh.1 as complaint, purshish sent by accused respondent No.1 regarding the intact of seal on the bottles at Exh.2, receipt issued by the Metropolitan Magistrate, Court No.8, Ahmedabad in respect of one sample bottle received from the Local (Health) Authority at Exh.3 and order of

Metropolitan Magistrate, Court No.8, Ahmedabad directing to send one muddamal sample bottle to the Director, Central Food Laboratory, Ghaziabad for Analysis at Exh.4. Report received from the Central Food Laboratory, Ghaziabad, dated 08-07-1987 is produced at Exh.5, receipt issued by the Food Inspector to respondent No.1 regarding cow milk taken for analysis is produced at Exh.7, receipt issued by respondent No.1 in respect of Rs.3/= received from complainant is produced at Exh.8 and report dated 13-03-1987 sent by Food and Drugs Laboratory, Vadodara in respect of cow milk is produced at Exh.10.

5. On completion of the prosecution witnesses further statement of respondent No.1 - accused was recorded under Section 313 of the Criminal Procedure Code wherein respondent No.1 denied that he sold adulterated cow milk to the complainant. It is the case of the appellant that on 03-03-1987 at around 9:00 a.m. the complainant visited the shop of respondent No.1 and took sample of cow milk in presence of the pancha which was sent to the Public Analyst and upon receipt the report of the Public Analyst it was found that the milk contained 7.5 per cent solids-no-fat instead of minimum 8.5 per cent solids-no-fat required under the P.F.A Limit i.e. 1 per cent less. Thereafter another sample was sent to the Central Food Laboratory. The report of the Central Food Laboratory shows that 8 per cent milk solids-no-fat is found against the requirement of 8.5 per cent solids-no-fat required under the P.F.A. limit. Thus, the solids-no-fat was found 0.5 per cent less and, therefore, the complaint was filed against the present respondent No.1.

6. The learned Metropolitan Magistrate, after appreciating the oral as well as documentary evidence led by the complainant and the defence of the accused, acquitted the respondent - accused by his impugned judgement and order of acquittal dated 29-10-1988. Relying on the judgement of this Court as well as judgement of the Apex Court Mr.Brhambhatt submitted that upon the report of the Local (Health) Authority it was found that there was 1 per cent less milk solids-no-fat, then there was no need for the accused - respondent No.1 to send another sample bottle to the Central Food Laboratory for the second time report. In his submission Mr.Brhambhatt submitted that the trial Court has erred in coming to the conclusion that the sample was taken without shaking is contrary to the evidence on record. It was lastly submitted that the learned Metropolitan Magistrate was wrong in acquitting the accused on the grounds mentioned in the Appeal Memo and prayed for

conviction of respondent No.1 (original accused).

7. Against the aforesaid submissions Mr.K.V.Shelat, learned advocate for respondent No.1, submitted that the trial Court has given benefit of doubt to respondent No.1 on the ground that there was deficit of 0.5 per cent milk solids-no-fat. The trial Court rightly held that it was doubtful whether the sample of cow milk had deficit of 1 per cent solids-non-fat. It was further contended by Mr.Shelat that there was material variance between the report of Public Analyst and Central Good Laboratory then this Court should not interfere with such order of acquittal in the appeal filed by the complainant after a period of more than 15 years of the commission of an offence more particularly when the sample of cow milk was found to be adulterated in the sense that as per the report of Public Analyst it was having 1 per cent solids-no-fat whereas as per the report of the Central Food Laboratory it was having 0.5 per cent milk solids-no-fat less. He further submitted that this Court is rather slow in interfering with the order of acquittal. Mr.Shelat has relied upon the judgement of the Hon'ble Supreme Court in the case of P.S. SHARMA Vs. MADANLAL KASTURICHANDJI & ANR., reported in 2002(2) FAC 224, wherein there was deficiency to the extent of only 1 per cent from the standard quantity and the Hon'ble Supreme Court refused to interfere with the order of acquittal passed by the High Court. He also relied upon the judgements in the case of ADMINISTRATOR OF THE CITY OF NAGPUR Vs. LAXMAN & ORS., Criminal Appeal No.132 of 1986 decided on 04-04-1994, 1996 (2) FAC 297 and also judgement of this Court in STATE Vs. BHAGUBHAI RAMJIBHAI, 1982(II) FAC 314 : 1982(2) GLR Vol. 23, 624.

In view of the above, I would not like to interfere with the impugned order of acquittal passed by the learned Metropolitan Magistrate in this case after so many years.

8. In view of the above discussion, without dealing with the other contention raised by Mr.Brhambhatt and going into the merit of the case this appeal is dismissed on the aforesaid grounds.

Sd/-

[SHARAD D. DAVE, J]

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'Bhavesh'